which the new road expected to carry coal to the market. This purchase, with the already large holdings of the carriers, gave them control over seventy-five per cent of the annual output and ninety per cent of the unmined coal lands. By agreement the carriers individually contracted to purchase the annual output of independent coal operators, securing to the carriers in perpetuity one-half the tonnage of the independent operators. *Held*, that the purchase of the coal property and the contracts with the independent operators are in violation of the Sherman Anti-Trust Law. *United States* v. *Reading Company*, 226 U. S. 324, 33 Sup. Ct. 90.

Combinations by loose agreement, as where competitors agree not to bid against each other or to fix selling prices, have long been held offensive to the Sherman Anti-Trust Act. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 20 Sup. Ct. 96; *Swift* v. *United States*, 196 U. S. 375, 25 Sup. Ct. 276. Consolidations of competing carriers are held within the act; and also consolidations by any class of competitors interfering with outside competitors. See discussion of *United States* v. *Union Pacific R. Co.*, *supra*. This latter principle would seem to cover the purchase of the coal property in the principal case. But the contracts to purchase the output of the independent operators did not interfere with any outside competitors, nor did they limit competition between the contracting railroads. And they partake rather of the nature of consolidation than of agreements to refrain from competition, for some of the advantages that flow from centralized management are present. These contracts if upheld, however, would give the defendants a dominating control over the anthracite coal business which would be dangerous to the public welfare, since the defendants would be free from the check of potential competition. The Supreme Court in an analogous case held illegal a consolidation by which all the available terminal facilities were acquired, though in that case there was the added fact of an arbitrary use of the control acquired. *United States* v. *Terminal R. Association of St. Louis*, 224 U. S. 383, 32 Sup. Ct. 507. It does not necessarily follow from these holdings that the elimination of any existing competition when new competitors may possibly arise is illegal.

SUBROGATION — RIGHTS OF ONE FORCED TO PAY DEBT AGAINST THE REAL DEBTOR. — The cashier of a bank, without authority, allowed the defendant to overdraw her account. Upon discovery of the shortage he gave the bank his note for the amount. He became bankrupt, and the bank established its claim against the assets. The assignee then sued the defendant for the full amount of the overdraft. *Held*, that the assignee is subrogated to the rights of the bank and can recover and retain the full amount of the overdraft. *Mentz's Assignee* v. *Mahoney*, 150 S. W. 503 (Ky.).

Subrogation is simply a method of preventing unjust enrichment. See 26 HARV. L. REV. 261. But in a proper case it may be denied on the ground that one who seeks subrogation must have clean hands. *Hays' Estate*, 159 Pa. 381, 28 Atl. 158; *Johnson* v. *Moore*, 33 Kan. 90, 5 Pac. 406. Thus where the plaintiff makes his wrong against the defendant the basis of his claim, or where his misconduct is dangerous to the public, he may be barred. *Guckenheimer* v. *Angevine*, 81 N. Y. 394; *Ramsay's Estate* v. *Whitbeck*, 183 Ill. 550, 56 N. E. 322. *Cf. Worden* v. *California Fig Syrup Co.*, 187 U. S. 516, 23 Sup. Ct. 161. Whatever the limits of the doctrine may be, in the principal case the wrong is atoned for, and does not seem to be so closely connected with the recovery of the overdraft as to defeat the action. Subrogation should always be permitted when, as in the principal case, it will prevent unjust enrichment, and the plaintiff is entitled in equity to relief. *In re McBride*, 19 N. B. R. 452; *Rees* v. *Eames*, 20 Ill. 282. See *Huff* v. *Hatch*, 2 Disn. (Ohio) 63, 67. *Contra*, *Doyle* v. *Glenn*, 4 Humph. (Tenn.) 309. But the court goes too far in saying that the plaintiff, after recovery, can retain the full amount of the over-

draft. An equitable doctrine should never be allowed to work inequitably. Therefore the plaintiff should be required to hold in trust for the bank the money in excess of the sum that he has paid to the bank. *Cf. Jordan* v. *Adams*, 7 Ark. 348; *Kendrick* v. *Forney*, 22 Gratt. (Va.) 748. To cases where an assignment or novation can be spelled out this reasoning is of course inapplicable. The principal case should be carefully distinguished from cases where the defendant, though at fault, has not been unjustly enriched. *German Bank* v. *United States*, 148 U. S. 573, 13 Sup. Ct. 702.

TAXATION — PARTICULAR FORMS OF TAXATION — INHERITANCE TAX PAID IN TWO STATES. — A testator, domiciled in Illinois, left personal property in California. After probate of the will in Illinois, an administrator with the will annexed was appointed by a California court, which approved his payment of legacies and California inheritance taxes on all the property in California, and ordered him to turn over the residuum of the property to the Illinois residuary trustee named in the will. This having been done, the question then arose in Illinois whether it would be giving full faith to the proceedings in California if the trustee were required to pay the Illinois inheritance tax. *Held*, that the tax might be imposed only on legacies paid out by him. *People* v. *Union Trust Co.*, 99 N. E. 377 (Ill.).

By the overwhelming weight of authority, an inheritance tax is not one on the property affected, but on the privilege of succeeding to the inheritance. *In re Macky's Estate*, 46 Col. 79, 102 Pac. 1075; *In re Stone's Estate*, 132 Ia. 136, 109 N. W. 455. *Contra, Estate of Cope*, 191 Pa. St. 1. It is not a property tax even though made a lien on property, or though the statute on its face levies a tax on property. *State ex rel. Schwartz* v. *Ferris*, 53 Oh. St. 314, 41 N. E. 579; *Gelsthorpe* v. *Furnell*, 20 Mont. 299. The reason ordinarily assigned is that the privilege of acquiring property by will or by succession is a right created and regulated by the state. *Minot* v. *Winthrop*, 162 Mass. 113, 38 N. E. 512; *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, 18 Sup. Ct. 594. But see *Nunnemacher* v. *State*, 129 Wis. 190, 198, 108 N. W. 627, 628. It follows that the legislature may impose burdens in the form of taxes on this privilege unrestricted by the constitutional provisions relating to the taxation of property as such. *In re Fox's Estate*, 154 Mich. 5, 117 N. W. 558; *Booth's Executor* v. *Commonwealth*, 130 Ky. 111, 113 S. W. 61. So also the tax may be imposed on the transfer of securities which as property are not in themselves within the taxing power of the state, as, for example, United States bonds or exempted state and municipal bonds. *Succession of Levy*, 115 La. 377, 39 So. 37; *Succession of Kohn*, 115 La. 71, 38 So. 898. If the tax had been on the property itself, the approved administration in California would have precluded any further inheritance tax in Illinois. But being regarded as a tax on the legatees resulting in a debt due to the state, the matter did not fall within the purview of the first administration.

TROVER AND CONVERSION — WHO MAY SUE — BAILEE AT WILL FOR CONVERSION OCCURRING AFTER LOSS OF POSSESSION. — A watch was stolen from the plaintiff, a bailee at will, and pawned with the defendant, who refused to give it up on demand by the plaintiff. After the theft but before the demand and refusal the bailor at will terminated the bailment. *Held*, that the plaintiff has no cause of action. *Landry* v. *Mandelstam*, 84 Atl. 642 (Me.).

Bare possession, even adverse, at the time of the conversion, is sufficient to support an action of trover. *Vining* v. *Baker*, 53 Me. 544; *McAvoy* v. *Medina*, 11 Allen (Mass.) 548. See *Buckley* v. *Gross*, 3 B. & S. 566, 574. But in the principal case the plaintiff must depend on some right to possession when the watch was refused. A finder, having a title good against all the world but